STATE OF MICHIGAN

COURT OF APPEALS

MELLISSA ROBERTS,

Plaintiff-Appellant,

v

CLARK REFINING AND MARKETING, d/b/a THE CORPORATION COMPANY,

Defendant-Appellee.

UNPUBLISHED
October 14, 2003

No. 240443
Ingham Circuit Court
LC No. 00-092701-NO

Before: Griffin, P.J., and Neff and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). This case arose after plaintiff sustained injuries when she slipped on a pile of collapsed cardboard boxes on defendant's sidewalk. We affirm.

The trial court granted defendant's motion after finding that the boxes on defendant's premises were an open and obvious danger and no evidence of special aspects existed to preclude liability. Plaintiff claims that the trial court erred by concluding that the condition was not unreasonably dangerous because reasonable minds could have concluded that defendant's customers might be distracted in various ways or might have believed that the benefits of taking the sidewalk outweighed the risks of walking over the boxes. This Court reviews de novo decisions regarding motions for summary disposition. *Joyce v Rubin*, 249 Mich App 231, 234; 642 NW2d 360 (2002).

"A premises possessor owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land." *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). "However, this duty does not generally encompass removal of open and obvious dangers." *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). In certain instances, the defendant is prevented from escaping liability where there are "'special aspects' of the open and obvious condition that differentiate the risk from typical open and obvious risks so as to create an unreasonable risk of harm." *Id.* at 517.

Plaintiff's contention fails under the standard for special aspects set forth by our Supreme Court in *Lugo*. Here, plaintiff was injured while chasing her two-year-old child who had run into the parking lot. Plaintiff's assertions of special aspects do not exhibit the unavoidable or extremely dangerous conditions set forth by the examples in *Lugo*. Plaintiff's only reason for not identifying the open and obvious condition was because she was (understandably) paying attention to her daughter and not where she was going. Had plaintiff been paying attention she would have been able to identify the boxes and either use an alternate route or use care in crossing them.

Plaintiff contends that the boxes on the sidewalk were "effectively unavoidable" or that the risk of injury they posed made them an unacceptable danger. This argument fails under *Lugo* as well. The emphasis of an "open and obvious" inquiry should "focus on the objective nature of the condition, not on the subjective degree of care used by the plaintiff." *Id.* at 524. In this case there were collapsed boxes on the sidewalk. Evidence that alternative routes were available to plaintiff was given in deposition testimony by plaintiff herself. Further, there is nothing unreasonably dangerous about such a condition in and of itself. That is, the boxes weren't unusual; it was the unforeseeable circumstances under which plaintiff encountered them that were unusual. Moreover, defendant did not cause or create the circumstance of plaintiff having to chase her child outside.

Because plaintiff's reasons for not seeing the boxes are wholly subjective and the level of danger does not present the special aspects contemplated in *Lugo*, there is no issue of material fact regarding whether reasonable minds could find that the collapsed boxes created an unreasonable risk of harm despite their open and obvious nature.

Affirmed.

/s/ Richard Allen Griffin
/s/ Janet T. Neff
/s/ Christopher M. Murray